

In the Matter of:)
)
Application for Certification) Docket No.
for the Three Mountain Power) 99-AFC-2
Project (Ogden Energy, Inc.))

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

Cynthia Praul, Commissioner Advisor

Edwin Bouillon, Jr., Hearing Officer

STAFF PRESENT

Robertta Mendonca, Public Adviser

Rick Buell

Caryn Holmes

APPLICANT

Lisa A. Cottle

Ann MacLeod

White and Case

Les Toth, Project Manager

INTERVENORS

Mark Wolfe, CURE

Dave Nelson, Department of Parks and Recreation

Nicholas Stern, Deputy Attorney General for
Department of Parks and Recreation

Jim Crockett

Marci Crockett

Burney Resource Group

Lawrence A. Cogan, Black Ranch

Claude Evans, Johnson Park

ALSO PRESENT

Michael Kussow, Shasta AQMD

Rita Cirulis, Shasta AQMD

Larry Sullivan, Burney Falls Fire Protection Dist.

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1 P R O C E E D I N G S

2 PRESIDING MEMBER KEESE: We'll start
3 this hearing. This is a Prehearing Conference
4 conducted by a Committee of the California Energy
5 Commission on Ogden Energy's Application for
6 Certification for the Three Mountain Power
7 Project.

8 Before we begin we'd like to introduce
9 the Committee, and then ask the parties to
10 identify themselves for the record.

11 I'm Bill Keese, Chairing this Committee.
12 Bob Laurie was not able to join us today. I have
13 my Advisor, Cynthia Praul, on my right, and our
14 Hearing Officer, Ed --

15 (Off the record.)

16 PRESIDING MEMBER KEESE: All right. I'm
17 Bill Keese, Chairman of this Committee, and on my
18 right is Cynthia Praul, my Advisor. On the left
19 is our Hearing Officer for this hearing, Ed
20 Bouillon.

21 We'll ask the Applicant to identify
22 their participants.

23 MS. COTTLE: Good evening. My name is
24 Lisa Cottle. I'm with the law firm of White and
25 Case, and we are counsel for the Applicant, Three

1 Mountain Power.

2 To my right is Ann MacLeod, she's also
3 with White and Case. To my left is Les Toth,
4 who's the Project Manager for Three Mountain
5 Power. And sitting over there is Daniel Tinman,
6 who's the community liaison for the Three Mountain
7 Power Project.

8 PRESIDING MEMBER KEESE: Thank you. For
9 the Staff?

10 MR. BUELL: Yes. My name is Richard
11 Buell, I'm the Project Manager for the Energy
12 Commission Staff. And to my left is Caryn Holmes,
13 who is our Staff attorney, and to her left is
14 Keith Golden, who is one of our air quality
15 experts. And in the audience we have Mr. Tuan
16 Ngo.

17 PRESIDING MEMBER KEESE: Thank you.
18 For CURE.

19 MR. WOLFE: Good evening. My name is
20 Mark Wolfe, for the law firm of Adams, Broadwell,
21 Joseph and Cardozo, here on behalf of CURE.

22 PRESIDING MEMBER KEESE: Thank you.
23 For the Burney Resource Group.

24 MR. CROCKETT: My name is Jim Crockett,
25 for the Burney Resource Group. My wife, Marci,

1 will be here shortly. And we have Karen Scholls,
2 with the Burney Resource Group, in the audience,
3 also.

4 PRESIDING MEMBER KEESE: Thank you.

5 For the California Department of Parks
6 and Recreation? Mr. Nelson.

7 MR. NELSON: My name is Dave Nelson,
8 representing the California State Parks, and to my
9 right is Nick Stern, Counsel from the Office of
10 the Attorney General, representing the State
11 Parks.

12 PRESIDING MEMBER KEESE: Thank you.

13 For Black Ranch.

14 MR. COGAN: Good evening. This is Larry
15 Cogan, with the law firm of Gray Cary Ware and
16 Friedenrich, and to my -- and we represent Fred
17 Carroll, d/b/a Black Ranch. And to my right is
18 Russ Erbes, an air quality expert with the
19 consulting firm of Kleinfelder.

20 PRESIDING MEMBER KEESE: Thank you.

21 For Hathaway Burney Ranch?

22 Not present at the moment.

23 And Claude Evans, individual. For the
24 record, Mr. Evans.

25 MR. EVANS: I am Claude Evans, from

1 Johnson Park.

2 PRESIDING MEMBER KEESE: Thank you.

3 We also have present Roberta Mendonca,
4 and Roberta will speak to us in a moment.

5 Agencies. Shasta County Air Quality
6 Management District.

7 MR. KUSSOW: Michael Kussow, Air
8 Pollution Control Officer, Shasta County.

9 MS. CIRULIS: I'm Rita Cirulis, from the
10 Shasta County Air Quality Management District.

11 PRESIDING MEMBER KEESE: Thank you.

12 Do we have any other agency
13 representation? Can you grab two mics somewhere,
14 please? Thank you.

15 MR. SULLIVAN: My name is Larry
16 Sullivan, Fire Chief, Burney Fire Protection
17 District.

18 PRESIDING MEMBER KEESE: Thank you.

19 As you'll recall from our previous
20 hearings, at this time if there are any members of
21 the public who care to identify themselves for the
22 record, they're welcome to do so at the present
23 time. This does not preclude you making comments
24 later on in the proceeding. Seeing none.

25 Ogden Three Mountain Power filed its

1 Application for Certification in March of '99.
2 The project is a 500 megawatt combined cycle
3 facility that will be built by Three Mountain
4 Power on an existing 10.2 acre industrial site
5 adjacent to the Burney Mountain Power Facility,
6 approximately one mile northeast of the town of
7 Burney.

8 On April 28th, 2000, the Committee
9 issued a notice scheduling this Prehearing
10 Conference. In response to this notice, the
11 Applicant, the Staff, and several Intervenors
12 filed Prehearing Conference statements in which
13 they indicated that certain topic areas may not
14 yet be complete, including Air Quality,
15 Alternatives, Water Quality, and Biological
16 Resources.

17 Staff's required analysis on Air Quality
18 cannot be completed until the Air District's final
19 Determination of Compliance and the valid
20 emissions offset package are available for Staff
21 review.

22 The purpose of today's Prehearing
23 Conference is to assess whether the parties are
24 ready for the scheduled Evidentiary Hearings, to
25 identify the areas of agreement or dispute, and to

1 discuss the procedures that are necessary to
2 conclude the certification process. In this
3 regard, the Committee will ask the parties to
4 present their respective positions on the topic
5 areas, to discuss the filing dates for testimony
6 and other evidentiary documents, and to plan for
7 briefing and comment periods.

8 We especially want to hear from agency
9 representatives on the status of their respective
10 reviews of this project.

11 At this time I'll ask Ms. Mendonca for a
12 report of the Public Adviser.

13 PUBLIC ADVISER MENDONCA: Good evening.
14 Thank you. I'm Roberta Mendonca --

15 PRESIDING MEMBER KEESE: Hold on a
16 second.

17 PUBLIC ADVISER MENDONCA: No?

18 Good evening. My name is Roberta
19 Mendonca, and I am the Energy Commission's Public
20 Adviser.

21 Actually, it's with a lot of pleasure
22 that I get to sort of applaud something that I've
23 observed in the process going on for Three
24 Mountain Power Project, about public
25 participation. And I think a lot of the credit

1 goes to the Project Manager, who has recently
2 adopted the practice of allowing public comment at
3 the beginning of his workshops. I think this has
4 facilitated the ability of the community to come
5 in and make their comments known, and then get on
6 to the rest of their work for that day. I think
7 that's a major plus.

8 And the second element that's been very
9 pleasant about this particular project is that the
10 Project Manager has worked very hard via the e-
11 mail to have direct contact with not only the
12 Applicant, but also the Intervenors, so that the
13 meetings and workshops and events have really been
14 well-planned by all of the parties.

15 And those two things I think really
16 deserve some recognition. So thank you, Rick
17 Buell.

18 (Applause.)

19 PRESIDING MEMBER KEESE: At this time I
20 will ask Mr. Bouillon to go over our schedule,
21 followed by the presentations of the parties.

22 HEARING OFFICER BOUILLON: Good evening.
23 The Committee recognizes that the Applicant, as
24 all of us, are very concerned about completing the
25 certification process with the presently assigned

1 schedule. But from everything we've read in the
2 Prehearing Conference statements, that doesn't
3 appear to be feasible at this time.

4 Specifically, with regard to Water
5 Quality, Biological Resources, and Alternatives,
6 as I understand, there's no party that thinks we
7 can have Evidentiary Hearings on the June 21st,
8 22nd, or 29th. Does anyone disagree with that
9 statement?

10 All right. So I don't need a lot of
11 comments about why we can't have it on that date,
12 then.

13 Because we're concerned, as a Committee,
14 that we have a complete record available for
15 review at the conclusion of these hearings, and
16 we're also somewhat concerned about further
17 bifurcation of this process. We've already
18 bifurcated this process once, to split the four
19 topics, the three that I just mentioned and Air
20 Quality, off from all the other topics, and we've
21 had -- have an FSA on what we've called Part One
22 on all the other topics, and we're awaiting an FSA
23 on Part Two.

24 And the question I'd like to have each
25 of the parties discuss tonight, including the

1 Applicant and the Staff, and the Public Adviser,
2 if she has any comments on it, is the feasibility
3 and desirability of a Part Two and a Part Three
4 FSA, regardless of how you term that. And I'd
5 like to now turn to specifically -- I'd like your
6 comments mostly to be directed to the topic of Air
7 Quality, and the hearings on the 21st and 22nd and
8 29th, with some mention of hearings on the other
9 part. But it's pretty apparent those are going to
10 have to be delayed.

11 There have also been some other requests
12 made in the Prehearing Conference statements, and
13 we'll take them up after we've resolved the
14 matters on the schedule.

15 So I'd like to start with the Applicant,
16 and then the Staff, and then the Intervenor. And
17 maybe we'll just go right around the table with
18 regard to the Intervenor. Normally I've always
19 called them up here first, but since they're in
20 the middle, too bad.

21 (Laughter.)

22 HEARING OFFICER BOUILLON: So we'll
23 start with the Applicant, and then when one --
24 instead of us calling on the next one, as soon as
25 you're finished, if the Staff would pick it up,

1 and then we'll just go right on around. And I'd
2 like to Air District's comments between the Staff
3 and the Intervenors.

4 MS. COTTLE: Okay. Three Mountain
5 Power's position is that we believe that three of
6 the topic areas at this time are ready and
7 complete, and ready to proceed to hearings. And
8 those are Air Quality, Public Health, and Noise.

9 But I'd just like to address, first of
10 all, your statement about the status of Water and
11 Biology, for a moment. And Alternatives.

12 It is correct that we proposed, in our
13 Prehearing Conference statement, that those three
14 topic areas not proceed to hearings on the June
15 21st and 22nd dates. And that proposal came out
16 of last week's workshop, at which we discussed all
17 of the remaining Part Two topic areas.

18 But I would like to point out that prior
19 to the workshop, we were ready to proceed to
20 hearings on Water. We believe that we have done a
21 substantial amount of analysis and presented, you
22 know, a lot of data. And so we were ready to go
23 forward on that topic. However, at the workshop,
24 we were informed of Staff's new analysis, and it
25 was the first time that we had heard that analysis

1 of the water supply issues in this case. And
2 based on some of the things that were said at that
3 workshop, we agree that we think it would be best
4 if some additional time were taken to attempt to
5 understand Staff's current thinking, and to work
6 out what we perceive to be difference of opinion
7 at this point, so that we can attempt to resolve
8 as many of the outstanding issues in that area as
9 possible.

10 Our preference for going forward on the
11 issues that we believe are able to be addressed at
12 this time stems, you know, partially from the
13 theme that we've reiterated throughout this
14 proceeding, which is that we would like to go
15 ahead and address as many of the issues as we can,
16 stick as close to the schedule that has been
17 established by the Committee as possible, unless
18 there is a reason for not being able to stick to
19 that schedule.

20 And the concern is based in part on what
21 we have perceived to be our experience in losing
22 Staff's attention, losing some of the momentum in
23 this proceeding when the schedule is -- is thrown
24 off track, and because we believe that we are, you
25 know, completely ready to go on Noise and Public

1 Health, we've already filed testimony on those
2 issues, Staff has already addressed those issues
3 in its Final Staff Assessment.

4 And as to the topic of Air Quality, we
5 believe that once the Final Determination of
6 Compliance is issued, that Staff will have all the
7 information that it needs to present its Final
8 Staff Assessment. And, in fact, at last week's
9 workshop Staff and the Applicant agreed upon a
10 proposal for going forward and using the currently
11 scheduled hearing dates on Air Quality, Public
12 Health, and Noise, subject to a day-for-day delay
13 in the Final Staff Assessment on Air Quality,
14 Public Health, and Noise, and on parties'
15 testimony on those topic areas. That's tied
16 directly to the issuance of the Final
17 Determination of Compliance.

18 So we believe that we have proposed a
19 workable plan for going forward, and that it's in
20 -- that it makes sense to go ahead and try and
21 move forward on those issues that we're ready to
22 move forward on.

23 HEARING OFFICER BOUILLON: Before the
24 Staff makes its presentation I'd like to ask you
25 one question, Ms. Cottle.

1 With regard to Public Health, my
2 recollection from the last hearings we had is that
3 all of the contested issues in Public Health had
4 to do with either Air or Water. Has that somehow
5 changed?

6 MS. COTTLE: I believe they all had to
7 do with Air.

8 HEARING OFFICER BOUILLON: Air?

9 MS. COTTLE: Which is why it was decided
10 to put the topic of Public Health on the same
11 track as Air. So our position is that once Air
12 Quality is ready, then Public Health is also
13 ready.

14 HEARING OFFICER BOUILLON: Ms. Holmes.

15 MS. HOLMES: Thank you. Let me start
16 first with a brief comment about the Water issue.
17 As Ms. Cottle pointed out, we held a workshop last
18 week to discuss both Air and Water issues, and at
19 that time we gave the Applicant a preview of what
20 our testimony that was due to be filed on the 26th
21 was going to look like. And specifically, we
22 identified a number of problems with the
23 submittals that had been made to date.

24 As a result of our doing that, as
25 opposed to waiting until the 26th to file our

1 testimony, I think we've reached an agreement that
2 the best thing for all parties to do is to delay
3 the filing of the Water testimony and try to
4 resolve some of these differences, so that we can
5 have, hopefully, shorter hearings at some time in
6 the future.

7 So I just wanted to point out that I
8 think that the reason that Water is being delayed
9 is because we've identified a number of
10 significant problems with the submittal, or
11 potentially significant problems, and we're
12 hopeful we'll be able to resolve them in this
13 additional time.

14 With respect to the Air Quality issue,
15 there's a -- there were a number of outstanding
16 issues that we've identified. One has to do with
17 the SCONOX technology. Another has to do with the
18 woodstove replacement program. A third had to do
19 with road paving. And a fourth issue that we
20 didn't mention in our Prehearing Conference
21 statement is that we still have not seen the
22 District's response to our comments on the DOC.

23 Let me walk through those one by one.

24 With respect to the SCONOX issue, Staff is ready
25 to proceed. We don't have any additional work to

1 do on that.

2 With respect to the woodstove issue, as
3 a result of the progress that we made at our
4 workshop earlier today, we believe that we are
5 ready to complete our testimony on the woodstove
6 issue.

7 The road paving has presented us with
8 some greater difficulties. As you're probably
9 aware, we asked for a proposal in January, and it
10 was presented to us last week at the workshop. We
11 had Staff stay over after the workshop and spend a
12 day going out and looking at the roads, as well as
13 coming up earlier today to try to look at the
14 roads. There remain some significant issues about
15 the road counts that were presented.

16 The Applicant has promised to provide us
17 the backup data for this later on this week, but
18 we're concerned that we're going to actually need
19 to potentially do some of the -- the counting
20 ourselves, or hire out some of the counting
21 ourselves, to confirm the numbers.

22 What we talked about with the Applicant
23 earlier today at the workshop was having Staff
24 draft testimony that confirms, hopefully, that the
25 total amount of roads that are available would --

1 would produce the required number of offsets, and
2 we would prioritize the candidate roads. But it's
3 possible that the actual selection of the roads
4 and the links, which would be dependent upon the
5 traffic counts, would not be completed until after
6 the hearings.

7 We would like to try to get that done
8 prior to the hearings, but if we can get a
9 confirmation that there are sufficient offsets
10 available, and that -- and we can establish a
11 priority of roads to pave, we believe that that is
12 sufficient to go forward to hearings, provided
13 that the actual selection of the roads is
14 completed prior to the Commission's decision.

15 In this way it's not dissimilar to
16 situations in the past, where the Commission has
17 not required the identification of the specific
18 offsets from a list of candidate offsets, until
19 immediately prior to the Commission decision.

20 The fourth issue, as I stated before,
21 was the fact that we have not seen the District's
22 response to our comments on the DOC. Obviously,
23 we'll simply address that in our testimony that we
24 file. If the DOC were to be filed tomorrow, our
25 testimony, pursuant to the agreement that we

1 reached last week, would be due on June 3rd, which
2 is a Saturday. So the next day, obviously, would
3 be -- a logical candidate would be the 5th.

4 The Applicant noted in their comments,
5 in their Prehearing Conference statement, that
6 June 7th is the last day that our testimony could
7 be filed and meet the requirement of, I think it's
8 Section 1747 of our regulations, which requires
9 testimony to be filed 14 days prior to hearing.
10 We're proposing to actually file it on that date,
11 given the amount of additional work that we've got
12 to do on the road paving issue.

13 Lastly, I'll just re-emphasize the --
14 the caveat that we made in our Prehearing
15 Conference statement, which is that EPA has
16 indicated to us that the DOC should not be
17 considered valid until the Section 7 consultation
18 has been completed. In a previous siting case,
19 Staff has gone forward with testimony with the DOC
20 in question by EPA. In this case, we are
21 recommending that we go forward and file our
22 testimony, but we note that the consultation
23 hasn't been completed, and, furthermore, that the
24 consultation may affect the DOC, may affect the
25 conditions that are contained in it. So there is

1 some risk to the Committee and to the parties that
2 the Air Quality record would have to be reopened
3 once the consultation is completed.

4 We are also ready to go forward on June
5 7th with Noise and Public Health, and we're
6 prepared to go to hearings on the June 21st and
7 June 22nd dates.

8 I think that kind of summarizes where we
9 are on the schedule.

10 HEARING OFFICER BOUILLON: Ms. Holmes,
11 if I might --

12 (Inaudible asides.)

13 HEARING OFFICER BOUILLON: Ms. Holmes,
14 before we proceed to the Intervenors, let me ask
15 you a question about the Section 7 consultation,
16 and the likelihood that in terms of conservation
17 of judicial resources, if you will, what's the
18 probability that the Committee might be spinning
19 its wheels if it held Air Quality hearings and the
20 EPA people disapproved of the FDOC?

21 MS. HOLMES: It's very difficult to say
22 at this point. We will have a better idea of
23 where we are on the consultation issue I think by
24 the time that we file our report on Water, that
25 we're going to be filing on May 26th. If you'd

1 like us to include an update on that issue at that
2 time, we could.

3 By then we will have had more
4 opportunity to consult with EPA on the -- the
5 issue of the Section 7 consultation. We'll also
6 have had more of a chance to work with Fish and
7 Wildlife Service and find out how they expect
8 their concerns about potential water impacts to be
9 addressed.

10 But sitting here right now, it's very
11 difficult to say.

12 HEARING OFFICER BOUILLON: All right.
13 Thank you.

14 MS. COTTLE: May I interject? Just -- I
15 just wanted to address briefly. We were also
16 aware that EPA had raised those questions.
17 However, it's our understanding that the staff
18 person at EPA who raised the issue last week was
19 the first time that this came up, to our
20 knowledge, and it was our understanding that they
21 had not yet had an opportunity to consult with
22 their legal counsel on this question. So we
23 consider that to be a somewhat premature
24 conclusion at this point, and it's something that
25 we're following up with directly with EPA.

1 HEARING OFFICER BOUILLON: Thank you.

2 MS. HOLMES: Can I make one more comment
3 on that issue. With respect to the Section 7
4 consultation, even if there were not to be an
5 issue of the validity of the DOC, Staff typically
6 recommends that the Commission not proceed with a
7 decision on a project until it's had a good sense
8 of what -- what U.S. Fish and Wildlife Service
9 might require in terms of mitigation.

10 We have in the past not required, for
11 other types of -- for other types of permits, not
12 required that consultation be completed. But
13 Staff usually files testimony and U.S. Fish and
14 Wildlife Service usually sponsors a witness at the
15 hearings, confirming that we've coordinated and
16 that the mitigation measures that U.S. Fish and
17 Wildlife Service are likely to require are similar
18 or identical to those recommended by Staff.

19 And in that case, we haven't even
20 started that process, so we can't make that
21 determination at this point.

22 HEARING OFFICER BOUILLON: Mr. Kussow.

23 (Inaudible asides.)

24 MR. KUSSOW: The Air District has
25 completed its effort in responding to comments

1 that we received during the public comment period
2 in the draft permit, the authority to construct
3 stage. We have also made modifications to the
4 draft permit as appropriate in response to those
5 comments and are ready to proceed with the FDOC.

6 We were waiting until this workshop
7 today, the one that preceded it, to get better
8 guidance on how the conditions regarding the road
9 paving and the woodstove offset program, and also
10 on the SCONOX technology, would be discussed, and
11 I think we have a fairly good understanding of
12 where those issues are going, except for the road
13 paving part of it.

14 We would hope that it would be possible
15 to be proceeding with the FDOC document as soon as
16 possible so we can offer the Commission, as well
17 as the Intervenor, these responses that we have to
18 their comments. And in doing that, we believe it
19 would be possible to fashion the conditions
20 regarding the road paving, the woodstove program,
21 in general terms, identifying the amount of offset
22 required, in the case of the road paving, identify
23 a few candidate roads that may be very good
24 possibilities within the pool to be finally
25 determined by thorough traffic counts, silt

1 studies, and that sort of information.

2 We reviewed the Applicant's initial
3 figures that they provided with the road paving,
4 and we don't have any reason to question the --
5 the traffic counts at this point. However, we
6 appreciate the Staff's concerns that some of those
7 counts may need some additional verification.

8 Sop we would hope that we -- it would be
9 possible to proceed along the way that the CEC
10 Staff attorney has suggested, in identifying a
11 potential pool of roads, and then actually
12 determining the actual distance of the road and
13 the specific selection of the road out of that
14 pool, through the certification process.

15 The woodstove part of it, I think we
16 came -- it appeared we came to a mutual
17 understanding this afternoon at the workshop
18 regarding the number of units, as far as a maximum
19 to be changed out in the program. There appeared
20 to be some agreement on the dollar figure for each
21 type of replacement, and those kind of facts we
22 would put in our general condition.

23 Regarding the concern with the EPA on
24 the Endangered Species Act, I did contact Matt
25 Haber, from EPA Region 9, this morning before I

1 came up here, because he had left a message for me
2 concerning EPA's concern with the possible
3 conflict in this area, and I did mention to him
4 that we do intend to have as a general condition
5 in our permit that it would be required that the
6 Applicant obtain any required permit from the U.S.
7 Fish and Wildlife Service or the California
8 Department of Fish and Game prior to construction.
9 That would be a requirement that would be listed
10 in our permit. We would also add as part of that
11 that certification by the California Energy
12 Commission would also be required.

13 And therefore, I think that if we put a
14 condition in in that effect, it would avoid the
15 concern that Mr. Haber expressed to me, where the
16 language that he was concerned about was that
17 there should not be an irretrievable commitment of
18 resources on the project, and an associated
19 federal action taken if -- if that was possible.

20 So in my view, by listing this as a
21 condition on the permit that such other permits be
22 obtained, that certification by the Commission be
23 obtained prior to commencing construction, I do
24 not see how any commitment irretrievable -- or
25 irretrievable commitment of resources could be

1 made. So in general, I think the District is
2 ready to proceed with the FDOC at this time.

3 The issue of SCONOX is something I
4 haven't mentioned yet. We discussed that at the
5 workshop last week, and the Applicant offered
6 additional information on the effort that they did
7 make in pursuing the applicability of that
8 technology to this particular project. The
9 response from the vendor, as I understand, was
10 quite tardy in arriving the day before our
11 workshop, and obtained it -- it contained a number
12 of what appear to be very unacceptable
13 qualifications to the proposal.

14 So our review of the SCONOX technology
15 in our initial document really hasn't changed that
16 much. We mentioned at -- in the preliminary
17 determination of compliance document that we had
18 considered SCONOX as a viable technology, but at
19 the time we did our review it wasn't being offered
20 by the vendor. Subsequently, in December of '99,
21 everyone's aware that the vendor came through with
22 a press release saying that the technology was
23 being offered on large turbine projects.

24 As a result of that, the District
25 requested the Applicant to specifically go out for

1 this bid proposal on this project, and we heard
2 last week the result of that attempt, and it was
3 not -- didn't appear to be favorable. So we
4 don't have any reason to change our initial review
5 at this point in saying that it does not appear
6 that a viable proposal has been received by the
7 Applicant for SCONOX in this case.

8 So that being the case, everyone has
9 been asking us when are we going to issue the
10 FDOC. I've been asked that three or four times in
11 the last week, and I guess I can say that we are
12 ready to issue it at any day now, if we can
13 proceed with the general terms of condition
14 regarding the road paving and the woodstove
15 program.

16 That's all we have to say at this point.

17 PRESIDING MEMBER KEESE: I heard one
18 reference to if it comes out tomorrow, when I
19 heard you suggest that you probably have to
20 incorporate information on the woodstoves and the
21 paving that came out of the workshop today, which
22 sounds to me like you're probably not going to
23 have the paperwork done tomorrow. Is that --

24 MR. KUSSOW: That's probably correct. I
25 think we would be very uncomfortable issuing it

1 tomorrow, but certainly early next week would not
2 be, you know, out of -- a very definite
3 possibility.

4 PRESIDING MEMBER KEESE: Thank you.

5 HEARING OFFICER BOUILLON: I'd like to
6 deviate from the schedule that I just set up a few
7 minutes ago, at the request of the Public Adviser.
8 She asked if we could take the Burney Resource
9 Group out of order because they have some sort of
10 a motion that they want to present to the
11 Committee, and it might be appropriate to get that
12 on the table before the other Intervenors speak.

13 So, Ms. Crockett.

14 MS. CROCKETT: For the record, I'm Marci
15 Crockett for the Burney Resource Group. I
16 apologize for the late entry.

17 In listening to the time factors
18 involved, judicious use of resources, scheduling
19 of data, information that still needs to be
20 compiled by Staff, the Burney Resource at this
21 point feels very uncomfortable even proceeding
22 with hearings on the Air Quality. The time factor
23 is very tight to review all the data. But that
24 notwithstanding, we have a motion that we are
25 bringing forward, and I will have Jim pass this

1 out. And it is basically a motion to stay further
2 proceedings pending completion of a groundwater
3 evaluation, and FS -- ESA compliance.

4 The motion is complete. I will docket
5 the points, the memorandum of points and
6 authorities with this on Thursday. I apologize
7 for the memorandum of points and authorities not
8 being with this document, but the motion is as it
9 will be -- excuse me, Jim, could you give Ms.
10 MacLeod one, too? Thank you.

11 So the memorandum of points and
12 authorities will be there. The document fairly
13 much works through the different areas of water
14 that have not been resolved, that are up against
15 the timeline. The judicious use of resources is
16 very apparent, and this motion would also help
17 Staff and the Commissioners to allow a timetable
18 for a complete study of the groundwater situation
19 which would dovetail with the Air Quality aspect
20 also being involved in this. It would allow the
21 FDOC time to be completed, to review it
22 thoroughly, and comments to be done in an orderly
23 manner.

24 So with that being said, I'll answer any
25 questions.

1 HEARING OFFICER BOUILLON: Since we
2 haven't read your motion, we're not going to ask
3 you any questions.

4 MS. COTTLE: Marci, how long are you
5 asking for --

6 HEARING OFFICER BOUILLON: But how about
7 -- excuse me. I do want to caution you one thing.
8 The fact that you've handed me a copy of this
9 motion doesn't mean you filed it. You understand
10 that --

11 MS. CROCKETT: That's correct.

12 HEARING OFFICER BOUILLON: Okay.

13 MS. CROCKETT: So that we can just bring
14 this motion forward for discussion. I am fully
15 aware that it has not been filed or docketed. And
16 the -- it will be filed, the motion will be filed
17 for docketing, as well as the points -- memorandum
18 of points and authorities will be with the copy
19 that is filed for docketing.

20 HEARING OFFICER BOUILLON: All right.

21 We can go back now to discussing the
22 schedule itself. Do you have anymore comments on
23 the schedule itself, Ms. Crockett?

24 MS. CROCKETT: At the workshop today, as
25 Mr. Kussow had stated, there is a timeline

1 dovetailing that appears to be very critical and
2 very tight, and I'm very uncomfortable with the
3 ability to review all the data and be ready for
4 Evidentiary Hearings on the 21st and 22nd, as far
5 as the Air Quality. That would be my main
6 concern.

7 My second concern is that if we were to
8 go ahead and do that as indicated, that there
9 might be additions, subtractions, deletions,
10 corrections, because of the woodstove program and
11 because of possible comments by the EPA.

12 So because of these factors, the Burney
13 Resource Group at this time is very uncomfortable
14 proceeding with Air Quality.

15 HEARING OFFICER BOUILLON: Does the Fire
16 District have any comments on the proposed
17 schedule? Do you have any comments about the --
18 the scheduling we've been talking about?

19 MR. SULLIVAN: No, sir.

20 HEARING OFFICER BOUILLON: Okay. Mr.
21 Evans, we'll come back to you.

22 MR. EVANS: Actually, I don't know what
23 I'm objecting to, but I'm objecting to the fact
24 that I don't think water quality and water use has
25 been adequately addressed. I still believe that

1 there is not enough water here in the basin to
2 support this project.

3 Other than that, I have nothing to say.

4 HEARING OFFICER BOUILLON: Thank you,
5 Mr. Evans.

6 Mr. Stern, or Mr. Nelson?

7 MR. STERN: Hi, I'm Nicholas Stern, here
8 for Department of Parks and Recreation.

9 And first of all, our focus is on water
10 resources, not the air quality, although I must
11 say I do appreciate the argument of the Burney
12 Resource Group desiring to delay proceedings until
13 the Section 7 ESA compliance is -- is done. It
14 certainly makes sense to me.

15 But, as I said, our focus is on the
16 water resources and the impact of the Three
17 Mountain Power Project on Burney Falls.

18 As to that, first of all, there are a
19 number of outstanding data requests. We issued
20 data requests that have not been responded;
21 instead they've just been objected to. And, in
22 fact, along with the objections, we received data
23 requests about our data requests. So that -- we
24 certainly need time to resolve that sort of thing
25 before we can go forward on -- on settling the

1 water resources issue.

2 Secondly, at the -- at the May 10th
3 workshop, of course Staff pointed out some issues
4 regarding water supply. The -- in addition, the
5 -- the hydrologist that we've been working with
6 has also pointed out a number of problems with the
7 TMP's analysis. He's not here today, but I think
8 he did point out some problems which, as I
9 understood it -- again, I'm not a hydrologist so
10 I'm not sure -- but as I understood it, actually
11 the gentleman from Dames and Moore agreed with,
12 that report will be forthcoming. It is not
13 complete yet, that research.

14 So the upshot of that is that we
15 certainly do need to wait for all the different
16 reports to be in to -- to settle that matter. A
17 lot more work needs to be done on that issue.
18 It's very much up in the air. It is hotly
19 disputed, and before we squander any precious
20 resources on -- on Three Mountain Power's project,
21 I think we need to make sure we have the issues
22 properly settled.

23 Lastly, and this is just a suggestion.
24 The Staff, I believe, set up a schedule for
25 submitting testimony of -- on the water resources

1 issue, of July 6, and -- and then rebuttal
2 testimony on July 18th. The only suggestion I
3 have regarding that specifically is that it seems
4 -- it seems that a better situation would be if --
5 if we are going to have the rebuttal testimony,
6 perhaps -- in other words, a chance for everyone
7 else to criticize the initial testimony of the
8 experts, perhaps we need a third round, as well,
9 to defend -- for the experts to defend. Or, in
10 the alternative, just dispense with the rebuttal
11 testimony. Kind of one or the other, it seems to
12 me.

13 It just makes -- if -- if we're going to
14 have the criticism, then allow the defense, is
15 basically all I'm saying. That's just a
16 suggestion.

17 HEARING OFFICER BOUILLON: Going down
18 the table. For CURE, now.

19 MR. WOLFE: Yes. Mark Wolfe, for CURE.

20 On the Air Quality issue, let me just
21 briefly state that we have some serious questions
22 about the lawfulness of the District's issuance of
23 what amounts to a PSD permit, a federal PSD
24 permit, without compliance with Section 7 of the
25 Endangered Species Act. But I won't go into

1 detail of what those concerns are at this point.

2 I think the issue that we're all trying
3 to talk about now, in response to your question,
4 Mr. Bouillon, is what are the chances that we're
5 going to have to reopen Air Quality hearings in
6 the future, after a Section 7 consultation is
7 complete. And I would generally agree with Ms.
8 Holmes that it's impossible to predict that at
9 this time.

10 I would note, however, that Section 7 of
11 the Endangered Species Act is a mandatory
12 procedure that is specifically designed to
13 generate information. It is specifically designed
14 to generate information about the impacts to
15 listed species from a proposed activity. So if
16 the question is what are the odds that compliance
17 with this mandatory procedure is going to produce
18 information that could result in a reopening of
19 the hearing, I would have to say that the chances
20 are very high, indeed.

21 I would also note that the issue,
22 certainly from a Section 7 consultation
23 standpoint, is intimately related with the issue
24 of Biology, and we certainly see a substantial
25 degree of benefit in having those two issues heard

1 reasonably close together, while they're fresh in
2 -- in everyone's mind.

3 So, in sum, I guess we would
4 respectfully disagree that Air Quality is ready to
5 proceed to hearings at this time. We're mindful
6 of, I guess, the Commission's past practice of
7 relying on a not yet final, or not yet valid FDOC,
8 and then presenting Air Quality testimony. I
9 think -- I'm mindful of that, but my understanding
10 was in those cases, Section 7 consultation had at
11 least been initiated, and at least some degree of
12 understanding had been reached between Staff and
13 Fish and Wildlife Service as to in general what
14 the impacts might be, and in general what the
15 mitigation measures might look like. But in this
16 case, they haven't even initiated the
17 consultation, so we have no idea what any of those
18 are going to be.

19 So, again, I -- we do not think we're
20 ready to proceed with Air Quality.

21 On water, I guess I would just echo Mr.
22 Stern. Based on the workshop last week, there
23 evidently is a substantial degree of disagreement
24 among Staff's consultant, the Applicant's
25 consultants, Parks and Rec's, and our consultants,

1 as to really what the impacts are going to be.

2 But I would just observe that the disagreements
3 are -- I guess we would characterize them as
4 structural. We're not arguing over details.

5 People legitimately seem not to have any
6 idea what this -- what pumping groundwater at this
7 basin is going to do. No idea. People are
8 debating how you characterize the water balance,
9 what -- how much water is coming in, how much
10 water is going out, and to where. These are
11 substantial major disagreements that we seriously
12 question the ability to resolve them by mid-July.

13 Furthermore, there's this issue of state
14 -- the State Water Board's Resolution 75-58, the
15 Dry Cooling policy, which the Commission is -- I
16 think we're all lucky that the Commission is going
17 to deal with that first in the Elk Hills
18 proceeding. But in the event it is determined,
19 either by the Commission, a regional board, or the
20 State Water Board, that the dry cooling policy
21 applies to this project, then that also is going
22 to generate additional information, because the
23 Applicant will then have to make a demonstration
24 that dry cooling is economically unsound. And
25 that could have the potential, again, of reopening

1 water hearings further on down the line.

2 And I would echo Mr. Stern's comment
3 that there are several pending data requests on
4 this topic. I think the most recent batch aren't
5 due until around June 1st, or May 31st. So it's
6 difficult to say at this time, without seeing the
7 responses to this request, precisely how close we
8 are to reaching the point of being ready to
9 proceed with water.

10 And Biology, I don't think I need to say
11 anything else. Without the initiation, even, of a
12 Section 7 consultation, it is absolutely
13 impossible to state at this time how close we are
14 to being ready to proceed on that topic.

15 And that's -- that's all I've got.

16 HEARING OFFICER BOUILLON: Thank you.

17 Black Ranch?

18 MR. COGAN: Larry Cogan, for Black
19 Ranch.

20 I won't re-hash what's in our statement
21 on topics other than -- than Air. Our statement
22 speaks for itself in that regard.

23 With respect to Air, we do have grave
24 concerns, though, about putting the cart before
25 the horse. There seems to be some notion that a

1 pool of roads can be identified that mitigation
2 credits can be determined before the very
3 underlying criteria and data is even verified. It
4 could be that once that data is looked at
5 carefully, whether that be the validity of traffic
6 counts or whatever, it could be that it -- it
7 undermines even the pool of roads that would
8 otherwise be considered. It could be that some
9 roads will simply be inappropriate. It could be
10 determined that the traffic study that was done
11 has to be thrown out.

12 There may not be sufficient time for
13 particularly the residents, such as my client, to
14 -- to thoroughly evaluate and comment on a new
15 traffic study that Staff may commission. All this
16 ends up into a compression of time that suggests
17 that even further errors can be made, despite
18 everybody's best intentions, and where, again,
19 unintentionally, the Commission may end up not
20 getting sufficient public participation regarding
21 feedback on very important data. And these roads
22 directly affect the citizens. They're probably
23 one of the most real aspects for a daily citizen's
24 life, of -- of this project mitigation.

25 That's it.

1 HEARING OFFICER BOUILLON: Ms. Mendonca,
2 do you have anything on behalf of the Public
3 Adviser with regard to the further bifurcation of
4 these proceedings?

5 PUBLIC ADVISER MENDONCA: Yes. This is
6 Roberta Mendonca, the Public Adviser. And I've
7 brought a predictable exhibit. It's our blue one-
8 page handout that describes the Energy Commission
9 process.

10 Of course, it gives a timeline in the
11 process. There are not multiple Prehearing
12 Conferences, there are not multiple Evidentiary
13 Hearings. We basically strive to have one go-
14 around. The more times we cut the pie, the more
15 difficult it is to explain our process to the
16 public.

17 So it's pretty simple. My bias, and my
18 job would be to tell you that the public needs to
19 not be confused. The fewer numbers of separate
20 hearings that you have, I think the easier it is
21 for them to understand.

22 Thank you.

23 (Inaudible asides.)

24 HEARING OFFICER BOUILLON: Before we
25 proceed any further, I do want to make one comment

1 in response to Mr. Wolfe's statement.

2 What Elk Hills does, and what the
3 Commission does with Elk Hills, isn't necessarily
4 going to determine what hearings or procedures
5 will take place in this case. So I wouldn't count
6 on getting too much relief from that proceeding.
7 We're going to have our own set of hearings
8 involving this community, this Applicant, this
9 project.

10 The rules of law and the applicability
11 of State Water -- State Water Resources Control
12 Board policies to Energy Commission proceedings
13 may be first determined in that proceeding, but
14 certainly that's going to be the extent of the
15 influence Elk Hills will have here. So people
16 like the Burney Resource Group don't have to
17 participate at Elk Hills to get -- to make their
18 voice heard.

19 And now I'd like to go back to the
20 Applicant. And I know you disagree with a lot of
21 what was said. I don't want to hear that, because
22 I already know that. What I want to know is if
23 you heard anything that you consider to be an
24 inaccuracy.

25 MS. MacLEOD: I'm Ann MacLeod --

1 HEARING OFFICER BOUILLON: Excuse me.

2 And Ms. Holmes, I'm going to ask you that question
3 next.

4 MS. COTTLE: I think we can probably
5 narrow it down to two things. First of all, there
6 were suggestions that the District's issuance of
7 the PSD permit is somehow illegal, or not valid or
8 not binding. And we have serious and strong
9 disagreements with that based on our own review of
10 the relevant legal authority. And we agree with
11 the District's evaluation, and we are pursuing
12 that, as I mentioned earlier.

13 So we -- we do disagree with that
14 characterization, and we believe that the
15 consultation process is outside of the District's
16 process in issuing the PSD permit.

17 The other point that I would address,
18 and then Ann MacLeod is going to address one --
19 one other thing. But there were a couple of
20 suggestions that the results of the Section 7
21 consultation process might somehow necessitate a
22 reopening of the air permit. And we think that
23 the chances of that happening are pretty small.

24 It was suggested that, you know, we
25 have, you know, no idea what's going on in the

1 biological side, and that's not true. We have had
2 discussions with Fish and Wildlife Service, we
3 have, you know, studied the groundwater issues
4 extensively. And we don't believe that there's a
5 very strong likelihood, if any, of any of the
6 issues coming out of the Section 7 consultation
7 process necessitating a change in the air permit.
8 Certainly not increasing any of the project's air
9 quality -- or air emissions.

10 HEARING OFFICER BOUILLON: Ms. Holmes.
11 Asking you the same question.

12 MS. HOLMES: I have nothing to add.

13 HEARING OFFICER BOUILLON: Oh, I'm
14 sorry.

15 MS. MacLEOD: I think the comment I have
16 to make is not -- is not actually a disagreement.
17 I wanted to make a comment about the Burney
18 Resource Group's motion. Although obviously we
19 haven't had a chance to read it. I see that the
20 kicker here is a request to delay proceedings
21 pending the completion of what they characterize
22 as five-year study.

23 And while we would disagree that we've
24 already completed a study that's based on five
25 years of data during drought periods, and it's in

1 this Dames and Moore report which was filed about
2 seven weeks ago, I believe that the motion that's
3 been advanced by the Burney Resource Group is
4 duplicative of the motion that they filed last
5 fall, and that the Committee rendered its decision
6 on and determined that any motion that indicated
7 that there was inadequate evidence on which the
8 Commission would base a judgment, was premature,
9 and that that was the purpose of hearings, is that
10 it is the Applicant's obligation or burden to
11 provide substantial evidence on which the
12 Committee can make its determination. And if the
13 Applicant has failed to do so, then the Applicant
14 suffers the risk of a negative determination.

15 So I'm sure that we'll have further
16 dealings with this motion after it's filed. But
17 given that the Committee is here now, and we're
18 all here now, given that this is, you know, given
19 to us at this point, I just want to make that
20 comment. I would like to avoid having to do
21 written responses to the motion, if we can, if it
22 can be disposed of, because the -- basically the
23 issue was already decided the last time the
24 Committee responded to the motion.

25 HEARING OFFICER BOUILLON: I would

1 comment in that regard that just on the face of
2 it, it appears to be somewhat duplicative, at
3 least of the motion that was previously heard by
4 the Committee. And my recollection is that the --
5 we -- that the motion was, in fact, premature or
6 untimely, and that it would depend upon the
7 evidence to be adduced at hearings.

8 I haven't read the motion, but I -- I
9 have been assuming, since -- since the Burney
10 Resource Group -- easy for me to say -- the Burney
11 Resource Group is intending that this motion be
12 heard and determined as a part of the Evidentiary
13 Hearings -- I don't know that, because I haven't
14 read it.

15 But with regard to the responsive
16 pleadings you might have to file in response to
17 this motion, I assume they're going to -- Ms.
18 Crockett, are you going to file this in the next
19 couple of days?

20 MS. CROCKETT: We plan to file --
21 probably on Wednesday it will be mailed. I can --
22 actually, let me correct that. We will file or
23 mail for filing on Thursday. We will be busy
24 compiling our points and memorandums, and a
25 memorandums of points and authorities, on

1 Wednesday.

2 But I would address Ms. MacLeod's
3 comments that this is a duplicative document.
4 Actually, what has happened is that it's a current
5 overview of data that has been gathered over the
6 last nine months, after the original motion was
7 filed. And I will clarify that all it does, in
8 essence, is state where we have and have not
9 gotten to at this point, and that questions
10 whether or not without the data that we feel is
11 necessary should we proceed to hearings.

12 And so that would be the most relevant
13 difference between this document and the other, is
14 that it is outlining data that has been collected
15 to date, lack of data that's been collected to
16 date. Of course, Burney Resource Group's
17 position. And then seeing the need for the
18 Section 7 consultation, the lack of initiation,
19 the inference from people stating EPA's judicious
20 choice of words that waiting until the Section 7
21 is done, or that if the FDOC were compiled, that
22 there would be no irretrievable conditions or
23 certification procedures within that, or use of
24 resources that could not be retrieved.

25 It points to a lot of unknowns, even

1 from the EPA's point of view at this point that
2 they, themselves, are not sure where this
3 consultation is heading.

4 Have I answered your question?

5 HEARING OFFICER BOUILLON: Yes, you
6 have.

7 MS. CROCKETT: Thank you.

8 HEARING OFFICER BOUILLON: Let me say
9 this about the motion, still without having read
10 it in any kind of detail at all. As soon as it is
11 filed, the Committee will issue an order with
12 regard to response times and response necessities.
13 And hearings, if necessary. I would anticipate
14 that if any hearings are going to be held on that
15 -- on the motion as just outlined by Ms. Crockett,
16 that they will be part of the hearings on Water
17 Resources. So it will all be combined together.

18 That would be my anticipation, but not
19 having really reviewed the motion I can't promise
20 that.

21 Now, Ms. Holmes, do you have any final
22 comments?

23 MS. HOLMES: Just two brief topics --
24 excuse me, two brief comments.

25 First of all, with respect to the

1 consultation under Section 7 of the Endangered
2 Species Act. Staff will obviously be in touch
3 with U.S. EPA and let the Committee and other
4 parties know of any information that we have from
5 them about, for example, when consultation will
6 begin -- it hasn't even been initiated yet -- and
7 what the status of the permit is in the interim.
8 So we'll -- that's a responsibility that we'd be
9 happy to assume, to let the parties and the
10 Committee know what happens with EPA's position
11 about the validity of the DOC, once the
12 consultation actually begins.

13 Second, with respect to the water issue,
14 I just want to make it clear that if Staff's
15 conclusion at the time that it files its testimony
16 is that it doesn't have enough information to
17 determine the extent of the impacts, that will be
18 our conclusion, and any recommendations that we
19 have on mitigation measures will reflect that.

20 So what we're saying is that we're
21 prepared to go forward with the dates that we set
22 out in our Prehearing Conference statement, fully
23 aware of the fact that one of the potential
24 outcomes may be that there is not sufficient
25 information to determine the extent of impacts and

1 that mitigation be recommended that reflects that
2 uncertainty.

3 PRESIDING MEMBER KEESE: Ms. Holmes,
4 consultation generally takes what time parameter?

5 MS. HOLMES: Formal consultation takes
6 135 days. We've been talking about the Applicant
7 initiating formal consultation I think this last
8 January. It has not happened yet.

9 PRESIDING MEMBER KEESE: So the 135 days
10 hasn't started?

11 MS. HOLMES: No. Has not.

12 PRESIDING MEMBER KEESE: But when it
13 starts, it doesn't have to take 135 days, does it?
14 That's -- that's a limit, or what?

15 MS. HOLMES: The 135 days is a limit.
16 However, the clock can stop during that 135 days
17 if they don't have sufficient information. So if
18 there's additional discovery that's needed, then
19 the consultation can take longer than 135 days.

20 MS. MacLEOD: Commissioner Keese, if I
21 may. There was a gentleman from the U.S. Fish and
22 Wildlife Service here last week at our workshop,
23 and he -- it is correct that 135 days is the time
24 limit. He pointed out, as Ms. Holmes did, that
25 the clock can stop. At the same time, he also

1 pointed out that a consultation can be done on an
2 informal basis and can be completed in less than
3 135 days. So it can work either way.

4 PRESIDING MEMBER KEESE: And -- thank
5 you, Ms. MacLeod.

6 (Inaudible asides.)

7 HEARING OFFICER BOUILLON: All right.
8 Well, first of all, let me tell you that we'll get
9 out a hearing order literally within the next two
10 or three days, this week, for sure, with regard to
11 all the matters that we've discussed with regard
12 to the schedule. And I can't tell you at this
13 point what that's going to be.

14 There are a couple of additional matters
15 I do want to raise, however. The Applicant, in
16 their Prehearing Conference statement, raised two
17 or three matters, and I'd like to make at least a
18 brief comment about them.

19 The first one had to do with renewal of
20 instructions regarding the scope of permissible
21 testimony and evidence at hearings. I am not
22 going to comment on that again. Most of the
23 parties are represented by -- by attorneys, and
24 I've already commented to the others at the prior
25 Prehearing Conference about what testimony is, and

1 how it's allowed.

2 And I know at the last hearing that we
3 had a new report dropped into our laps, literally
4 on the morning of hearings, about seismic data.
5 That was the kind of information you cannot
6 anticipate, and we let it come in.

7 I think everyone around this table
8 understands what evidence is and what evidence
9 isn't, and how this hearing is going to be
10 conducted. If anybody has any questions about
11 that, they can either talk to me about procedural
12 matters, or to Ms. Mendonca about anything
13 involving the process.

14 The second matter they raised had to do
15 with hearsay evidence. And I think the comments I
16 just made apply with equal force to that. I'm not
17 going to have a little law seminar on the
18 admissibility of hearsay testimony at
19 administrative hearings. If somebody needs an
20 education on that and does not have counsel, the
21 Public Adviser can help them with that issue,
22 also. We'll rule on items of hearsay as they come
23 up at the hearing, but we're not going to give a
24 seminar on it.

25 The other thing is there is one matter

1 of outstanding discovery, partly created because I
2 failed to put a date in the order with regard to
3 the discovery that Burney Resource Group is
4 providing. If I might hear from either one of
5 you, what's the status of that? Have you provided
6 the information to them?

7 MR. CROCKETT: You're -- you're speaking
8 to the motion to compel?

9 HEARING OFFICER BOUILLON: Yes.

10 MR. CROCKETT: Yes. We have responded
11 to them. We filed it electronically, and it is in
12 the U.S. mail.

13 HEARING OFFICER BOUILLON: Okay. Do you
14 have continuing problems with it?

15 MS. COTTLE: Well, we have not actually
16 seen it.

17 HEARING OFFICER BOUILLON: Oh, okay.

18 MS. COTTLE: Because our understanding
19 is that it came by e-mail last night, and
20 obviously we were traveling here today. So none
21 of us have had any opportunity to see it. I see
22 that he has a copy over there for us, and that
23 would be very helpful.

24 However, I do know, I believe, based on
25 someone's very cursory review of the e-mail, that

1 there was a statement in there that some of the
2 information that we requested is not being
3 provided on grounds that it belongs to Pacific Gas
4 and Electric Company, and that they're continuing
5 not to provide that information. Did that person
6 report that to me correctly? If I could maybe ask
7 the Burney Resource Group to explain whether they
8 believe they've complied with the -- with the
9 order, or if this is the complete information that
10 they intend to supply us with.

11 MS. CROCKETT: We will take just a
12 moment here while copies of --

13 HEARING OFFICER BOUILLON: Well, let me
14 interrupt you for a minute.

15 I was only intending to deal with the
16 lack of specificity about when they were supposed
17 to comply. If they e-mailed you something last
18 night, which they say was their compliance, that's
19 fine. If you don't think it complies, we can take
20 it up outside of these proceedings. And I don't
21 -- I wouldn't intend to do it here, anyway,
22 because I haven't seen the responses either. And
23 I -- I don't have any of that file in front of me,
24 so I wouldn't be prepared to -- to mediate your
25 differences at this point.

1 But I would be glad to do so, maybe in a
2 conference call, or something.

3 MS. MacLEOD: How would you like us to
4 handle it, if -- if we do not feel that the
5 information provided fully responds to the order?
6 How would you like us to handle that, just contact
7 you by phone?

8 HEARING OFFICER BOUILLON: Why don't you
9 e-mail Burney Resource Group with your concerns,
10 and send a copy to me. If you cannot informally
11 resolve it, say in a day or two, let's set up a
12 conference call and I'll get in the middle of it.

13 MS. MacLEOD: Okay. Thank you.

14 (Pause.)

15 HEARING OFFICER BOUILLON: All right.
16 Is there any other matters we should take up at
17 this time?

18 Does any member of the public have any
19 comments they want to make?

20 MR. EVANS: Can I say something?

21 HEARING OFFICER BOUILLON: Excuse me?
22 You sure can.

23 MR. EVANS: May I say something?

24 HEARING OFFICER BOUILLON: Oh,
25 certainly. But you're going to have to get a

1 microphone, because we can't hear you.

2 MR. EVANS: I certainly appreciate your
3 courtesy. Oh, I've got to talk in both of them at
4 once?

5 HEARING OFFICER BOUILLON: One records,
6 and one makes it so I can hear.

7 MR. EVANS: Oh. Well, this is primarily
8 -- this is primarily a -- I can't even say the
9 word. This is primarily directed to Lisa Cottle.
10 Yeah. No, it's not personal, believe
11 me.

12 How many days do I have left to answer
13 the 33 questions that you sent me?

14 MS. COTTLE: Mr. Evans, our intent in
15 sending those questions to you, and I -- I have
16 tried to make this as clear as we could, was that
17 if you didn't have any of the answers, that we
18 wanted you to just tell us that, and then we will
19 withdraw any further requests.

20 And when I talked to you last week you
21 indicated to me that you -- you thought you might
22 have some of the information. So, you know, any
23 -- do you remember the due date -- I'm sorry.

24 (Inaudible asides.)

25 MS. COTTLE: I believe, Mr. Evans, that

1 they're due in another 15 days or so. The -- the
2 deadline is 30 days after the date when you
3 received the questions.

4 MR. EVANS: Well, that -- that relieves
5 me. With any good luck, I'll have it in the mail
6 Friday, I hope.

7 MS. COTTLE: That would be fine.

8 MR. EVANS: Because, you know, I don't
9 have anything to work with except my writing.
10 Okay, that's all.

11 MS. COTTLE: That's fine. Thank you
12 very much.

13 MS. MacLEOD: Mr. Evans, the outside
14 date would be May 30th.

15 MR. EVANS: Okay. Thank you.

16 PRESIDING MEMBER KEESE: Are there any
17 other questions here?

18 Well, seeing no further questions, we
19 will adjourn this hearing. Thank you.

20 (Thereupon, the Prehearing Conference
21 was adjourned at 6:35 p.m.)

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CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Prehearing Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
Prehearing Conference, not in any way interested
in the outcome of said Prehearing Conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 25th day of May, 2000.

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